

REMARKS

Claims 1-21 were originally filed in the present application.

Claims 1-21 are pending in the present application.

Claims 1-21 were rejected in the December 29, 2006 Office Action; all rejections are traversed.

No claims have been allowed.

Reconsideration of the claims is respectfully requested.

Anticipation

In Sections 1 and 2 of the December 29, 2006 Office Action, the Examiner rejected Claims 1-7 under 35 U.S.C. §102(e) as being anticipated by U. S. Patent No. 6,608,832 to *Forslow* ("Forslow").

A prior art reference anticipates a claimed invention under 35 U.S.C. § 102 only if every element of the claimed invention is identically shown in that single reference, arranged as they are in the claims. (MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. (MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985)).

Claim 1 requires, among other limitations, receiving a quality-of-service profile corresponding to a mobile station. This limitation is not taught or suggested by the art of record. The Examiner alleges that this is taught by Forslow at col. 4, lines 4-41 and col. 11, lines 11-28:

Packet-switched data communications are based on specific protocol procedures which are typically separated into different layers. FIG. 3A shows a GPRS "transmission plane" that is modeled with multi-layer protocol stacks. Between the GGSN and the SGSN, the GPRS tunneling protocol (GTP) tunnels the PDUs through the GPRS backbone network 52 by adding routing information to encapsulate PDUs. The GTP header contains a tunnel end point identifier (TID) for point-to-point and multicast packets as well as a group identity (GID) for point-to-multipoint packets. Additionally, a type field that specifies the PDU type and a quality of service profile associated with a PDP context session is included. Below the GTP, the well-known Transmission Control Protocol/User Datagram Protocol (TCP/UDP) and Internet Protocol (IP) are used as the GPRS backbone network layer protocols. Ethernet, frame relay (FR), or asynchronous transfer mode (ATM)-based protocols may be used for the link and physical layers depending on the operator's network architecture.

Between the SGSN and mobile station/host, a SubNetwork Dependent Convergence Protocol (SNDCP) maps network level protocol characteristics onto the underlying logical link control (LLC) and provides functionalities like multiplexing of network layer messages onto a single virtual logical connection, ciphering, segmentation, and compression. A Base Station System GPRS Protocol (BSSGP) is a flow control protocol, which allows the base station system to start and stop PDUs sent by the SGSN. This ensures that the BSS is not flooded by packets in case the radio link capacity is reduced, e.g., because of fading and other adverse conditions. Routing and quality of service information are also conveyed. Frame relay and ATM may be used to relay frames of PDUs over the physical layer. ...

A generalized group of quality of service parameters may be defined for a transfer mechanism and is referred to as a bearer quality of service profile. The bearer quality of service profile may be used to define the quality of service at the radio link control layer, the logical

link control layer, and at the GPRS tunneling protocol (GTP) layer in the packet-switched bearer in FIG. 3 to thereby establish an end-to-end quality of service. The radio link control layer is influenced by the packet delay and reliability quality of service parameters of the bearer quality of service profile, while the logical link control layer is also influenced by bit rate and precedence/priority information. The GPRS tunneling protocol between the GPRS serving and gateway nodes SGSN and GGSN must ensure that the tunnel does not violate any of the parameters in the quality of service profile. This requirement is normally met because the radio link is the bottleneck of the mobile communication system architecture.

As can be seen, nothing in these passages teaches or suggest receiving a quality-of-service profile corresponding to a mobile station, although quality of service is mentioned. There is a “quality of service profile associated with a PDP context session” mentioned as part of the GPRS tunneling protocol between the GGSN and the SGSN, but this is not taught to correspond to a mobile station. This is the only time that a “PDP context session” is mentioned in Forslow, so it is not clear what this “context session” refers to. As such, claims 1-7 distinguish over Forslow.

Further, Claim 1 requires receiving application information corresponding to the mobile station, and this is not taught or suggested by Forslow. The portions of Forslow cited by the Examiner appear to indicate that an application can request a quality of service, but there does not appear to be any teaching or suggestion of actually receiving application information, as claimed, and certainly not that the application information corresponds to a mobile station. As such, claims 1-7 distinguish over Forslow.

Further, Claim 1 requires determining quality-of-service parameters according to the quality-of-service profile and the application information. As neither the claimed QoS profile nor the

application information, as claimed, are taught or suggested by Forslow, Forslow cannot teach or suggest determining QoS parameters based on this.

As there are multiple limitations of the independent claims not taught or suggested by the art of record, all anticipation rejections are traversed.

Applicant respectfully notes that the Examiner's rejection makes broad reference to large, multi-column portions of Forslow's disclosure with regard to various limitations. As such, and although the references have been studied carefully, it is difficult to identify what elements of Forslow's disclosure are believed by the Examiner to correspond to each of the claim elements, and therefore difficult to specifically address and distinguish these issues. Applicant respectfully requests that the Examiner identify specifically which elements in these large cited portions of Forslow are believed to correspond to the claim elements, so that they can be specifically discussed and so the Examiner's specific concerns can be addressed.

Obviousness

In Sections 3 and 4 of the December 29, 2006 Office Action, the Examiner rejected Claims 8-21 under 35 U.S.C. §103(a) as being unpatentable over the Forslow reference in view of U. S. Patent Application Publication No. 2003/0103454 to *Wahl, et al.* (hereafter, simply “Wahl”).

In ex parte examination of patent applications, the Patent Office bears the burden of establishing a prima facie case of obviousness. (MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)). The initial burden of establishing a prima facie basis to deny patentability to a claimed invention is always upon the Patent Office. (MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)). Only when a prima facie case of obviousness is established does the burden shift to the Applicant to produce evidence of nonobviousness. (MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)). If the Patent Office does not produce a prima facie case of unpatentability, then without more the Applicant is entitled to grant of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)).

A prima facie case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)). To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to

modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant's disclosure. (MPEP § 2142).

Wahl appears to be relied on simply because it has a "QoS controller", and otherwise bears little relation to the claim limitations. There is no clear reason why one of skill in the art would purportedly believe that Forslow needs a QoS controller, since Forslow itself does not require one.

Independent Claim 8 requires

a QoS controller capable of receiving from a mobile station a packet data call initiation signal and sending an authorization request corresponding to the mobile station to an authorization server, wherein the QoS controller receives from the authorization server an authorization message and quality-of-service profile corresponding to the mobile station, and wherein said QoS controller is further capable of receiving application information corresponding to the mobile station, determining quality-of-service parameters according to the quality-of-service profile and the application information, and transmitting a control message to the mobile station capable of causing the mobile station to communicate thereafter according to the quality-of-service parameters.

Independent claim 15 has similar limitations.

These limitations are not taught or suggested by Forslow or Wahl, alone or in combination. The discussion above with regard to Forslow applies here, and is incorporated by reference. The limitations not taught or suggested by Forslow, as discussed above, are similarly not taught or

suggested by Wahl. As such, all claims distinguish over all art of record, alone or in combination, and all rejections are traversed.

Reconsideration and allowance of all claims is respectfully requested.

SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckbutrus.com*.

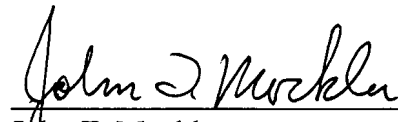
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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